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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,585	12/31/2003	Harry K. Kraklow	K30-002-02-US	8988
22854	7590	11/15/2004	EXAMINER	
MOORE, HANSEN & SUMNER, PLLP 225 SOUTH SIXTH ST MINNEAPOLIS, MN 55402			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 11/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,585

Applicant(s)

KRAKLOW ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

In the specification, the continuing data is not accurate. On line 5 in paragraph 001, the prior application number is 09/946494, not "09/946464"; correction is requested.

Claims 1,9,10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Lines 1-5 are confusing; applicant claims a "sufficient amount of flour" and then claims "about 10-50% flour. It seems like two different amounts of flour are claimed which make the claims indefinite because it is not known what is intended.

Claim 9 has the same problem as claim 1.

Claim 10 has the same problem as claim 1.

Claim 11 has the same problem as claim 1.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simms et al (EPA 0145550) in view of Katta et al .

Simms et al disclose a non-refrigerated shelf-stable cookie dough. The shelf stable dough comprises about 5-20% by weight corn syrup or other viscous sweetener, from about 10-25% sucrose, from about 13%-30% shortening, from about 25-60% flour, from 0-3.5 encapsulated leavening agent, from about 0-7% humectant, from about 3-25% conventional cookie texturing and flavoring ingredients. The dough has a water activity of less than about .72 and a pH of about 6.5 or above. The corn syrup is chosen to obtain a dough having a water activity of less than .72. Suitable fats and shortening includes lard, tallow, hydrogenated animal oils, solid vegetable oils such as corn oil, peanut oil, coconut oil and soybean oil. Mixtures of fats or shortenings can also be used. Antimicrobial agents such as potassium sorbate, calcium sorbate etc.. can be used in amount ranging from about .15% -.30%. Typical cookie flavoring and texturizing ingredients include emulsifiers such as sorbitan, sodium stearoyl lactate, salt, egg, milk powder, peanut butter, vanilla, cocoa, particulate flavorings such as chocolate chips, oats, raisin and nut meats. The dough is shelf-stable for at least about six months under non-refrigerated conditions. The total moisture content of the dough ranges from about 6-10% by weight. (see pages 5,6,8-9,11,12,13 and14)

Simms et al do not disclose the moisture content of the liquid sweeteners, the addition of barley flour, oat flour and beta-glucan and the ratio of such flour to wheat flour.

Art Unit: 1761

Katta et al disclose toaster cookies. They teach to make health cookies by using barley flour that has a high beta-glucan content. (see example 7)

It would have been obvious to one skilled in the art at the time of the invention to replace a portion of the wheat flour with other flour such as the barley flour having high beta-glucan content taught by Katta et al when desiring to make a healthier version of cookies. It is well known in the art that flour such as oat flour, barley flour is healthier than wheat flour because of its fiber content. Thus, it would have been obvious to one to substitute with such flour to make a healthier product. The proportion used depends on the nutritional desired taken into consideration the taste, flavor and texture; one can readily determine the appropriate amount through routine experimentation to obtain product having satisfying taste, texture, flavor and nutrition. As to the moisture content of the sugar, Simms et al teach to use corn syrup which is the same type of liquid sweetener used; thus, it is obvious the moisture content is similar. In any event, it would have been obvious to vary the sugar used according to taste preference as long as the moisture content of the dough remains within the required range.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 12, 2004

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700